



Mar 10 2009  
11:30AM

## **EXHIBIT D**

**Excerpt from October 31, 2007 MDL Status Conference**

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...

THE COURT: All right. We're ready to do the requests

6 to strike certain defendants' discovery.

7 Oh, yes. This doesn't make any sense to me. This is

8 the one where the defendants are asking plaintiffs questions

9 that the defendants have in their own control. And it's just

10 contentious and time-consuming and unnecessary and distracting

11 and harassing, and I don't know why you're doing it.

12 Mr. Garvey, do you want to risk your good name, with

13 that introduction?

14 MR. GARVEY: I'll give it that shot, your Honor.

15 Believe it or not, this issue is related in a way to

16 number 4 that I stood to address earlier, which is why I've

17 drawn both today.

18 THE COURT: I figured that. I did figure that. And

19 they're going to work with you on that.

20 MR. GARVEY: Right.

21 THE COURT: But you have the information. It seems to

22 me if you want to get dismissed, you make a little presentation

23 like you would to a prosecutor in a case, you make a proffer

24 and you say, you can't really need me, let me out. So you tell

25 them things like, Atlantic Richfield never owned a UST that or

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1 MTBE release. Instead of asking them for information to that

2 effect, just say there is no such thing, I want to be let out.

3 MR. GARVEY: There are --

4 THE COURT: That was just one example. I picked ARCO,

5 I could have picked others. You know, Chevron never sold in

6 Philadelphia, fine. You want to say it, say it.

7 MR. GARVEY: Sure. Or we can take my client, a

8 regional distributor, and say, admit that they didn't operate a

9 refinery. I sort of --

10 THE COURT: I'm not going to allow these

11 interrogatories. Just come in and tell them you didn't, and

12 then if they don't have any proof to the contrary, they ought

13 to let you out.

14 MR. GARVEY: I see where your Honor's going with this.

15 The purpose behind all of them was simply -- we agree that in

16 many instances this is our information.

17 THE COURT: It is.

18 MR. GARVEY: What we'd like from them is a

19 confirmation, they don't have anything else beyond that.

20 THE COURT: Go to them. I know there's not a lot of  
21 time. And you do have more troops than they do, just by  
22 definition, I mean, just, you know, 13 times, minimum. But in  
23 any event, go to them and say, we know of no proof, we doubt  
24 you have any proof that so-and-so ever owned an underground  
25 storage tank in that area. Say it. And if they don't have any

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1 proof, they ought to say, we dismiss.

2 MR. GARVEY: I understand. My interrogatories, which  
3 are 15 RFAs, three contention interrogatories, which, again,  
4 our Southern District local rules say, please do those near the  
5 end of discovery, it's a more appropriate time for that.

6 THE COURT: True. Requests to admit or contention  
7 that you know, that's in your control, that's data you gave  
8 them or information you gave them, is really a waste of time  
9 and it's overlawyering and it's tricky. And let's move on.

10 MR. GARVEY: Trying not to overlawyer. Ours were  
11 modeled on the Getty conspiracy interrogatories, which the  
12 plaintiffs actually turned around and served on Getty. Getty  
13 answered them, which resulted in the resolution of an agenda  
14 item this morning.

15 THE COURT: And that makes sense, you see, if Getty  
16 answers them, it makes perfect sense to me. If you want to  
17 answer your own requests to admit -- no, no, it's a great  
18 idea -- and your own contention interrogatories, come in to the  
19 plaintiffs and say, here's the answers to the questions we  
20 pose. If you have no other evidence, let me out. Okay. All  
21 defendants are directed to answer their own requests to admit  
22 and their own contention interrogatories, and I mean it. You  
23 spend time drafting them, now you answer them and give the  
24 information to the plaintiffs. Now we're ready for well  
25 contention interrogatories.

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1 MR. GARVEY: Your Honor, may I --

2 THE COURT: I'm done. I'm moving on to well  
3 contention interrogatories.

4 No, defendants do not have to point the finger and  
5 tell you who they can -- no, no, that's over too. We've solved  
6 another waste of time. Do you want to still be heard,  
7 Mr. Walsh?

8 MR. WALSH: No, your Honor, I'm going to follow  
9 Mr. Garvey's roll and retreat.

10 THE COURT: That's good. So now we actually have a  
11 couple real questions and then we just get to the schedule.